

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

PATRICIA KUBIAK,	x	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	Case No. 2:15-cv-01126-DSC-LPL
CITIZENS BANK, N.A. d/b/a RBS CARD	:	
SERVICES,	:	
	:	
Defendant.	:	<b>Electronically Filed</b>
	:	
	:	
	:	
	:	
	x	

**ANSWER AND AFFIRMATIVE DEFENSES OF  
DEFENDANT CITIZEN BANK, N.A. TO PLAINTIFF'S COMPLAINT**

Defendant Citizens Bank, N.A. ("Citizens") hereby answers the Complaint filed by Plaintiff Patricia Kubiak ("Plaintiff") as follows:

**INTRODUCTION**

1. The allegations contained in Paragraph 1 are introductory and conclusory in nature and therefore require no response. To the extent a response is required, Citizens specifically denies that it violated the Telephone Consumer Protection Act, codified at 47 U.S.C. section 227 et seq. ("TCPA").

**JURISDICTION AND VENUE**

2. Paragraph 2 of the Complaint states legal conclusions to which no response is required.

3. Answering Paragraph 3 of the Complaint, Citizens admits it conducts business in the Commonwealth of Pennsylvania. The remaining allegations of Paragraph 3 of the Complaint state legal conclusions to which no response is required.

4. Paragraph 4 of the Complaint states legal conclusions to which no response is required.

### **PARTIES**

5. Answering Paragraph 5 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

6. Paragraph 6 of the Complaint states legal conclusions to which no response is required.

7. Answering Paragraph 7 of the Complaint, Citizens denies that it is a corporation or that its principal place of business is located at 375 Ghent Road, Fairlawn, Ohio 44333.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is required.

9. The allegations contained in Paragraph 9 are introductory and conclusory in nature and therefore require no response. Paragraph 9 of the Complaint also states legal conclusions to which no response is required.

### **FACTUAL ALLEGATIONS**

10. Answering Paragraph 10 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

11. Answering Paragraph 11 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

12. Answering Paragraph 12 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

13. Answering Paragraph 13 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

14. Answering Paragraph 14 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

15. Paragraph 15 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, Citizens denies these allegations.

16. Answering Paragraph 16 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

17. Answering Paragraph 17 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis, denies them.

18. Answering Paragraph 18 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

19. Answering Paragraph 19 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

20. Answering Paragraph 20 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

21. Answering Paragraph 21 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

22. Answering Paragraph 22 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them.

#### **ALLEGED VIOLATIONS OF THE TCPA**

23. Answering Paragraph 23 of the Complaint, Citizens incorporates by reference its responses to the foregoing Paragraphs as though fully set forth herein.

24. Answering Paragraph 24 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them. Paragraph 24 of the Complaint also states legal conclusions to which no response is required.

25. Answering Paragraph 25 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and

on that basis, denies them. Paragraph 25 of the Complaint also states legal conclusions to which no response is required.

26. Answering Paragraph 26 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them. Paragraph 26 of the Complaint also states legal conclusions to which no response is required.

27. Answering Paragraph 27 of the Complaint, Citizens is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and on that basis, denies them. Paragraph 27 of the Complaint also states legal conclusions to which no response is required.

28. Answering Paragraph 28 of the Complaint, Citizens denies the allegations contained therein.

29. Answering Paragraph 29 of the Complaint, Citizens denies the allegations contained therein.

30. Answering Paragraph 30 of the Complaint, Citizens denies the allegations contained therein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

1. Plaintiff fails to state a claim against Citizens upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

(Statute of Limitations)

2. Plaintiff's claims may be barred in whole or in part by the applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

(Failure to Mitigate Damages)

3. Plaintiff failed to take proper and reasonable steps to avoid, minimize, or mitigate Plaintiff's alleged damages and, to the extent of such failure, the damages allegedly incurred by Plaintiff, if any, should be reduced accordingly or eliminated entirely.

**FOURTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

4. Plaintiff's claims are barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

(Fault of Others)

5. If Plaintiff suffered or sustained any loss, injury, damage, or detriment, the same was directly and proximately caused and contributed to by the breach, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct or intervening acts of others, and not by Citizens.

**SIXTH AFFIRMATIVE DEFENSE**

(Bona Fide Error)

6. Although Citizens denies any liability in this matter, Citizens contends that any alleged acts or omissions of Citizens giving rise to Plaintiff's claims are the result of innocent mistake and/or bona fide error despite reasonable procedures implemented by Citizens.

Citizens acted in a reasonable manner in connection with the transaction at issue in this action.

**SEVENTH AFFIRMATIVE DEFENSE**

(Good Faith Conduct)

7. Citizens at all times acted in good faith and in accordance with reasonable commercial standards, thus precluding any recovery by Plaintiff against Citizens.

**EIGHTH AFFIRMATIVE DEFENSE**

(Lack of Causation)

8. The damages complained of were the result of the intervening actions of others and were not proximately caused by the actions or omissions of Citizens.

**NINTH AFFIRMATIVE DEFENSE**

(Lack of Malice)

9. Citizens specifically denies acting with any willfulness, oppression, fraud, or malice towards Plaintiff or others.

**TENTH AFFIRMATIVE DEFENSE**

(Lack of Standing)

10. Plaintiff's claims are barred because Plaintiff lacks standing to bring them.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Consent)

11. Plaintiff's claims are barred because Plaintiff consented to any alleged conduct in the Complaint.

**TWELFTH AFFIRMATIVE DEFENSE**

(Prior Express Consent)

12. Although Citizens denies any liability or wrongdoing alleged in the Complaint, Plaintiff's TCPA claim would also be barred because there was prior express consent for any calls made by Citizens to Plaintiff's cellular telephone.

**OTHER DEFENSES**

13. Citizens has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, defenses available. Citizens expressly reserves the right to assert additional defenses in the event that discovery indicates that such defenses are appropriate.

**PRAYER FOR RELIEF**

WHEREFORE, Citizens prays for judgment as follows:

1. That Plaintiff takes nothing by reason of the Complaint;



2. For its costs of suit herein;
3. For attorney's fees according to proof; and
4. For such other and further relief as this Court may deem just and proper.

Dated: December 2, 2015

By: /s/ Felicia Y. Yu  
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***Attorneys for Defendant CITIZENS  
BANK, N.A.***

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendant Citizens Bank, N.A. was electronically filed on November 30, 2015 causing service to be made through the Court's ECF system on all counsel of record.

/s/ Felicia Yu  
Felicia Yu